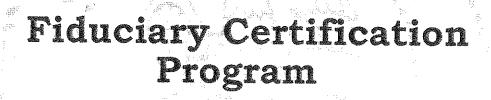
### Arizona Supreme Court Administrative Office of the Courts



Compliance Audit

Sun Valley Group, Inc.

October, 2006

Copyright 2006 Arizona Supreme Court



Ruth V. McGregor Chief Justice

ADMINISTRATIVE OFFICE OF THE COURTS

David K. Byers Administrative Director of the Courts

October 16, 2006

Mr. Peter Frenette Sun Valley Group, Inc. 1423 South Higley Road, Suite 115 Mesa, AZ 85206

RE: Fiduciary Compliance Audit

Dear Mr. Frenette:

Enclosed is the final compliance audit report for the Sun Valley Group, Inc.

Thank you for the cooperation and assistance during the compliance audit process exhibited by you and your staff. Their hard work throughout the audit process has been appreciated. To the extent the fiduciary audit process will assist the court to ensure the safety, health and welfare of individuals and estates entrusted by the court to your management, we have benefited from our audit of Sun Valley Group, Inc. I hope Sun Valley Group, Inc. and your clients will equally benefit.

If you have any questions, please let me know at (602) 364-2378.

Sincerely,

Nancy Swetnam, Director

Certification and Licensing Division

Nanny Levelna

Enclosures

Copy: Honorable Karen O'Connor, Presiding Probate/Mental Health Judge, Superior

Court in Maricopa County

Dave Byers, Director, Administrative Office of the Courts

Mike Baumstark, Deputy Director, Administrative Office of the Courts

### TABLE OF CONTENTS

### Sun Valley Group, Inc

	Section Number
EXECUTIVE SUMMARY	1
FINAL REPORT	2
Objective Methodology	
Scope Findings	
Auditee's Response	
Corrective Action Intended	
APPENDICES A. Response from Corporate Counsel	3
B. Response from Principal	

#### Disclaimer

This final report represents the information and conditions encountered at the point in time of the audit and does not purport to represent conditions prior to or subsequent to the performed audit. The information presented does not represent an endorsement or denunciation of the audited fiduciary or business.

After this report is distributed to the audited fiduciary, presiding judge of the county and, if a public fiduciary, the county supervisors, it becomes public record.

# Section 1

**Executive Summary** 

### **Executive Summary**

### Sun Valley Group, Inc.

### Compliance Audit Report

The Arizona Supreme Court, Fiduciary Certification Program conducted a compliance audit of Fiduciaries, LLC pursuant to Arizona Revised Statutes § 14-5651 and Arizona Supreme Court Administrative Order 2003-31. During the period of April 11, 2006 through May 4, 2006 the Compliance Unit audited the fiduciary activities of the Fiduciaries, LLC and its certified employees. The following is a summary of the audit findings.

### Finding #1 - Certification Number

Sun Valley Group, Inc. submitted documents to the Superior Court in Maricopa County without the fiduciary's certification and business's certification numbers on court documents.

Sun Valley Group, Inc. agreed with the finding and stated they have sent letters to its counsel to ensure future compliance.

### Finding #2 – Late Filings

Statutorily required reports on fiduciary clients were submitted to the court after the due dates.

Sun Valley Group, Inc. agreed with the finding and has taken steps internally and with its counsel to ensure timeliness of court submissions.

### Finding #3 – Accuracy

Inventory and Appraisements, Annual Accountings and Annual Reports of Guardian were inaccurately prepared and/or documented.

Sun Valley Group, Inc. agreed with the finding and has taken steps to improve the professionalism of its employees via policies and procedures, training and additional education.

### Finding #4 – Documentation

Sun Valley Group, Inc. did not keep suitable records of the administration of client cases and exhibit those records upon request.

### **Executive Summary**

Sun Valley Group, Inc. agreed with the finding and has taken steps with staff, software and physical files to address the deficiencies. In addition, Sun Valley Group, Inc. has hired a file clerk to exclusively file and organize the physical files.

### Finding #5 – Inventory

Examples were found of Sun Valley Group, Inc. not listing in reasonable detail and indicating the market value of estates as of the date of appointment of each item listed on an inventory.

Sun Valley Group, Inc. agreed with the finding and has taken steps to improve the professionalism of its employees via policies and procedures, training and additional education.

### Finding #6 – Supplementary Inventory

Property subsequently discovered and not included in an original inventory and appraisement was not provided to the court in a supplemental inventory.

Sun Valley Group, Inc. agreed with the finding and has taken steps to improve the professionalism of its employees via policies and procedures, training and additional education to comply with the requirement.

#### Finding #7 – Securing Assets

The fiduciary did not marshal and secure the property and income of the client as soon as possible.

Sun Valley Group, Inc. agreed with the finding and has taken steps to improve the professionalism of its employees via policies and procedures, training and additional education to comply with the requirement.

#### Finding #8 – Diligence

Fiduciary clients' financial interests were compromised by a lack of diligence.

Sun Valley Group, Inc. agreed with the finding and has taken steps to improve the professionalism of its employees via policies and procedures, training and additional education to comply with the requirement.

### **Executive Summary**

### Finding #9 – Certified Staff

Sun Valley Group, Inc. staff positions have responsibility for decision-making on court appointed fiduciary clients and are not certified.

Sun Valley Group, Inc. did not agree with the finding but does agree with the requirement. Sun Valley Group, Inc. believes they are in compliance with the requirement and that no additional staff require certification. Further, Sun Valley Group, Inc. believes the two certified staff members are sufficient to exercise any needed decision making for court appointed clients.

# Section 2

Final Report

#### **Objective**

The compliance audit of the Sun Valley Group, Inc. was conducted pursuant to the Fiduciary Program's responsibilities as set forth in A.R.S. § 14-5651, Arizona Supreme Court Administrative Order No. 2003-31 and the Arizona Code of Judicial Administration ("ACJA") § 7-201: General Requirements and § 7-202: Fiduciaries<sup>1</sup>.

The objective of the compliance audit was to determine compliance with applicable statutes, Arizona Supreme Court orders and rules and ACJA § 7-201 and § 7-202.

### Methodology

In preparation for the compliance audit, preliminary survey questions were requested and responded to by the Sun Valley Group, Inc. The responses were reviewed and compiled to assist in the development of case file samples. In addition, information was requested from the Superior Court in Maricopa County to verify court appointment information.

In order to test for compliance, the program has developed and currently utilizes a set of fiduciary compliance attributes consisting of Arizona statutes, Arizona Supreme Court rules and ACJA § 7-201 and § 7-202. Compliance with these requirements was tested by staff interviews, observation and reviewing samples of client case files.

A stratified sampling approach was used. The selected samples of court appointed client case files were designed to provide conclusions about the accuracy, validity and timeliness of transactions, internal controls and compliance with the fiduciary attributes utilizing a cross-section of samples of court appointment types. Client case files were selected by type of appointment, length of appointment, type of required client protection and initiation or termination of appointment during the review time frame.

Beginning April 11, 2006 and prior to beginning the onsite fieldwork, the auditor reviewed the selected client court files from the Superior Court in Maricopa County and conducted internal controls interviews with Sun Valley Group, Inc. staff.

<sup>&</sup>lt;sup>1</sup> Arizona Code of Judicial Administration, Fiduciary Certification, January 1, 2004.

During the period of April 11, 2006 through May 4, 2006 the Compliance Unit of the Certification and Licensing Division of the Administrative Office of the Courts, Arizona Supreme Court, conducted the onsite compliance portion of the audit of the Sun Valley Group, Inc. office. The onsite compliance audit consists primarily of fiduciary client case file review. The audit also included the fiduciary activities of the principal and uncertified staff.

Sun Valley Group, Inc. was the court appointed fiduciary on 67 guardian, conservator, combination guardian/conservator, trusts and personal representative cases as of March 29, 2006. Sun Valley Group, Inc. has approximately \$21,500,000 in client assets under their management.

Scope

The compliance audit team reviewed the selected stratified sample of ten (10) client case files of court appointments and terminations, focusing on the internal controls, processes, timeliness, accuracy, statutory and ACJA 7-202 requirements of client case administration.

Summary

Peter Frenette and Heather Frenette are the Sun Valley Group, Inc. principals. Sun Valley Group, Inc staff extended professional courtesies and cooperation to the audit team during the course of the audit. There is a climate of compliance exhibited from management down through line staff. Good internal controls were demonstrated including file room security and an appropriate segregation of duties.

Sun Valley Group, Inc has good business processes and practices in place. In addition, the audit has been viewed by the principals as an opportunity to improve upon those practices and to correct any noted areas of non-compliance.

The compliance audit found non-compliance in nine (9) key areas. The non-compliance was found in the areas of inventory and appraisements, accountings, documentation and diligence. These findings are discussed as follows:

Finding # 1  > Certification  Number	Documents submitted to the Superior Court in Maricopa County did not include the fiduciary's certification and Sun Valley Group, Inc.'s ("SVG") (business) certification numbers on court documents.  • All client files were missing one or both certification numbers
Related Attributes:	
Arizona Code of Judicial Administration § 7-202(F)(5)	
Requirement	Sun Valley Group, Inc. must include the required certification numbers, the individual's and the office, on all documents submitted to the superior court.
Auditee's Response	"SVG agrees with the finding that one or both certification numbers were missing on court documents audited."
Corrective Action	"SVG has taken steps to comply with the Requirement. SVG has sent two letters out to its counsel to ensure this to be performed."

### Finding # 2

#### > Timeliness

#### Related Attributes:

A.R.S. § 14-5315(A) A.R.S. § 14-5418(A) A.R.S. § 14-5419(A)

Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (2)(e)

Local Rules & Customs of Practice in Arizona Superior Court Probate Matters, Maricopa County, Rule 5.7(c)

### # 2 Statutorily required reports on fiduciary clients were submitted to the court after the due dates or not at all.

- Late Annual Guardianship Reports -- Clients # 1, 6, 8 & 9
- Late Inventory -- Clients # 1, 4, 5, 6, 7, 8, 9 & 10
- Late Accountings -- Clients # 1, 6, 7, 9 & 10
- Estate Management Plan Clients # 5, 6, 7, 8 & 10
- Proof of Restriction Clients # 5, 8 & 10

#### Requirement

The fiduciary must submit the inventory and appraisement, annual accountings, guardianship reports, estate management plans and/or proof of restriction on or before the statutorily required due date or court ordered due date for each client.

#### Auditee's Response

"SVG agrees with the Finding regarding timeliness of SVG's reports to the court. SVG identified this deficiency in our preparations for the audit."

#### Corrective Action

"SVG has begun a review of its docket due dates as calendared in our *TimeMatters* database. The attorney for SVG must also have accurate dates calendared and hence the outcome of our review will be shared with our counsel. This will ensure our counsel is supplied with the data timely by SVG and aid the attorney in filing on time."

### Finding #3

### > Accuracy

#### Related Attributes:

Arizona Code of
Judicial Administration
§ 7-202, Appendix A,
Code of Conduct,
Standard (2)(f); (4)(j)
and (5)(h)

The inventory and appraisement, annual accounting and annual guardianship reports required by the court were inaccurately prepared and/or documented in the sampled cases:

- First AZ account # XXXX-2136 statement amount differs from the inventory Client # 1
- Beginning and ending dates of the accounting period are not correct – Client # 1
- The Pioneer Natural Resources investment was not listed on the inventory Client # 3
- For real property the wrong assessed year was used on the accounting and the Kingswood address was incorrect - Client #3
- A Superior Process Inc. disbursement did not agree with the check or accounting Client # 3
- Unrestricted assets plus annual income exceed bond amount Client # 5
- Merrill Lynch account balance is different from annual accounting on the 1<sup>st</sup> thru the 4<sup>th</sup> annual accounting Client # 5
- Failed to include the automobile on the inventory Clients # 5 & 9
- Bank One account # XXXX-4732 has wrong account number on the inventory Client # 6
- Two separate life insurance policies were combined into one on the inventory Client # 6
- The second accounting was amended 3 or more times due to court accountant review Client # 6
- Bank One balance on 1<sup>st</sup> and Final Accounting differs from statement Client # 7
- Unrestricted assets exceed bonded amount Client # 7
- CD value was incorrect on the accounting –Client # 9
- Aguila funds were not listed on the 1<sup>st</sup> accounting Client # 9
- World Savings CD had wrong ending balance on accountings (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>) Client # 9
- Only 11 interest postings on the accounting and cannot verify \$2.19 Client # 9
- On the 1<sup>st</sup> accounting the APS disbursement and on the 3<sup>rd</sup> accounting the Southwest Ambulance disbursement were not properly recorded Client # 9
- The 1<sup>st</sup> amended ending accounting balance does not match the

	<ul> <li>beginning balance of the 2<sup>nd</sup> accounting – Client # 10</li> <li>The 1<sup>st</sup> accounting does not reflect National Bank of AZ account – Client # 10</li> </ul>
Requirement	The fiduciary must ensure any document filed with the Superior Court in Maricopa County is complete, accurate and understandable.
Auditee's Response	"SVG agrees with the Finding, there were inaccuracies in the sampled cases. SVG will seek changes to comply with the Requirement."
· · · · · · · · · · · · · · · · · · ·	
N.	
Corrective Action	"SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework."
	l l

### Finding # 4

> Documentation

Related Attributes:

A.R.S. § 14-5418(B)

By statute a fiduciary must keep suitable records of the administration of client cases and exhibit those records upon request. Suitable records include conformed copies of client court documents and documentation which includes decision-making and tracks the disposition, storage, disbursement and appreciation of items in a client's estate. Examples of missing documentation are:

- No conformed inventory document in file Client # 1
- No documentation on the Commonwealth of Australia bank account Client # 1
- No copy of title or picture of the Buick, no evidence of its disposal Client # 1
- Receipts or copies of receipts for cash, Travelers Checks and coins were not documented in file Client # 1
- Interest earned was not detailed on the accounting Client # 1
- Proof of recorded letters in Maricopa and Coconino was not found – Client # 3
- Documentation of the diminished Bank of America funds prior to appointment and the request of the family to not pursue was not in file – Client # 3
- Title to the Pinewood property not found Client # 3
- Information on the settlement re: Montana Power Class Action suit was not disclosed Client # 3
- Proof of insurance on the Pinewood and Kingswood Circle properties was not found Client # 3
- The disposition of assets at the time of discharge was not documented Client # 3
- Will was not located with the client file Client # 4
- Documentation was not present to verify 7/2/02 Northern Trust transfer from account # XXXX-5385 to account # XXXX-5282 - Client # 5
- Documentation insufficient to follow accounting amendments
   Client # 6
- Bank of America stock earnings are undocumented Client #
- The court accountant required SVG to disclose the terms of the loans to two children, which should have been documented Client # 10

### Requirement Sun Valley Group, Inc. must develop a systematic process for marshalling, securing and documenting the administration of a client's estate and/or care to include all assets, transactions, activities and decision-making for each court appointed client. Auditee's Response "SVG agrees with the Finding, there were missing documents in the sampled cases. SVG will seek changes to comply with the Requirement." Corrective Action "SVG will take steps to improve the professionalism of its employees by making enhancements in its case files, Case Management database TimeMatters, its policies and procedures, training of its staff, and additional education coursework. SVG has begun to add "Outlines" to each new case built in our relational database. Outlines are a systematic process to identify all tasks a fiduciary must complete or could encounter in performing our function. TimeMatters will "tickle" us with our To-Do's in advance of a given date or alert us if task are not completed. We have also begun to make improvements in our physical files. We have reconfigured the file room, sought additional file space, are scanning more documents and linking them to a client in TimeMatters, and hired a file clerk to exclusively file and organize the physical files."

Finding # 5  > Inventory  Related Attributes:  A.R.S. § 14-5418(A)  Requirement	<ul> <li>Arizona statute requires a fiduciary to list with reasonable detail and indicate the market value of an estate as of the date of appointment or date of death of each item listed on the inventory.</li> <li>The World Savings checking account was not valued as of the date of appointment Client # 3</li> <li>Ford stock shares were not valued as of the date of appointment Client # 10</li> <li>The fiduciary must provide detail on an inventory, even if it is of nominal value, to avoid giving erroneous or misleading information to either the court and/or interested parties.</li> </ul>
Auditee's Response	"SVG agrees with the 2 erroneous findings in the audited sample."
Corrective Action	"SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework"

Finding # 6  Supplemental Inventory  Related Attributes: A.R.S. § 14-3708  Requirement  Auditee's Response	Client property subsequently discovered or valued was not included in the original inventory & appraisement and was not provided to the court in a supplemental inventory.  • A supplemental inventory should have been filed to remove assets determined to be valueless – Client # 3  • Several after discovered assets necessitated the submission of a supplemental inventory – Client # 9  If any property not included in the original inventory comes to the knowledge of a fiduciary or if the fiduciary learns the value or description indicated in the original inventory for any item is incorrect or misleading, the fiduciary must make a supplementary inventory and file it with the court and/or notify the heirs.  "SVG agrees with the 2 erroneous findings in the audited sample."
Corrective Action	"SVG will take steps to comply with the Requirement and improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework"

Finding # 7  > Securing Assets	A fiduciary must take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible.
Related Attributes:	\$1.2 million in assets were not accounted for on the inventory  — Client # 9
A.R.S. § 14-5417 A.R.S. § 14-7302	
Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (4)(b) & (5)(b)	
Requirement	The fiduciary appointed as a conservator must observe the standard of care of a prudent man dealing with the property of another and if the fiduciary has special skills or expertise (i.e. certification) she/he is under a duty to exercise prudence, intelligence and diligence.
Auditee's Response	"SVG agrees with the erroneous finding in the audited sample."
Corrective Action	"SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework"

Finding # 8  Polligence  Related Attributes:  A.R.S. § 14-5421  Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (4) & (5)(d).	A fiduciary must exercise extreme care and diligence when making medical and financial decisions on behalf of a ward or protected person.  • There was no evidence letters were filed/recorded in the county where the client's property is located – Client # 1  • The Montana Power stock certificate was located in the client file rather than a secure and safe location – Client # 3  • A client account (Wells Fargo) was permitted to exceed the collateralized amount for over a year – Client # 3  • The AZ Department of Revenue was not contacted to determine if the client income taxes were paid per court order – Client # 4  • SVG failed to inform the IRS of fiduciary appointment until May, 2005 – Client # 4  • SVG failed to file a court ordered status report in a timely manner – Client # 5  • Northern Trust account # XXXX-5737 was permitted to exceed the collateralized amount for at least six months – Client # 6  • Letters were not recorded until the court accountant required SVG to do so – Client # 10
Auditee's Response	"SVG agrees with the findings."
Corrective Action	"SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework."

Finding # 9  > Certified Staff  Related Attributes	The Arizona Code of Judicial Administration § 7-202 requires the principal fiduciary to agree that not fewer than one certified fiduciary shall have the assigned primary responsibility for each court appointment as a guardian, conservator or personal representative.  • Interviews with staff confirmed the positions of the two
Arizona Code of Judicial Administration § 7-202 (E)(1)(b)(4)	Estate Managers and the two Care Managers, at a minimum, should be certified fiduciaries. Of the "Duties requiring certification", these managers performed the majority of the fiduciary functions.
Requirement	Staff exercising decision-making for a court appointed client in the course of their duties should become certified.
Auditee's Response	"SVG agrees with the Requirement and believes it is in compliance."
	Note: SVG does <u>not</u> agree with the Finding but does agree with the Requirement.
Corrective Action	"SVG does not believe the two Estate Managers and the two Care Mangers should become certified. The staff assists the Certified Fiduciaries, Peter and Heather Frenette; Peter and Heather Frenette assume responsibility for every court appointment as guardian, conservator or personal representative."
	"During the Principals' infrequent vacations or if they are away from the Phoenix metro area, they are within telephonic reach. They also delegate authority to Alisa Gray, Esq. or Stephanie Bivens, Esq.; both versed in fiduciary practices as you know, advise various fiduciaries on all aspects of their responsibilities."
	"SVG believes it is in compliance with Code of Judicial Administration § 7-202 (E)(1) (b) (4) as "the principal shall agree that no fewer than one certified fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or

personal representative" has been achieved."

# Section 3

A.
Response from Counsel

## GRAY & FASSOLD, P.C. ATTORNEYS

301 East Bethany Home Road Suite A-111 Phoenix, Arizona 85012-1264

(602) 294-9242 FAX: (602) 294-2644 gray@gray-fassold.com

August 9, 2006

Ms. Kitty Boots
Compliance Unit Manager
Certification and Licensing Division
Arizona Supreme Court
Administrative Office of the Courts
1501 West Washington Street
Phoenix, Arizona 85007-3231

Re: Fiduciary Compliance Audit--The Sun Valley Group, Inc.

Dear Ms. Boots:

On behalf of The Sun Valley Group, Inc., allow me to extend my client's and my gratitude for the manner in which the compliance audit was conducted. My client appreciated the opportunity to review its policies and procedures, as well as its performance pursuant to such policies and procedures, with the Certification and Licensing Division's assistance. My client and I agree with the summary contained in the draft compliance audit report regarding the quality of its business processes and practices. Like any organization, my client recognizes that there is always room for improvement and looks forward to implementing practices and procedures to continue to improve its performance and, most importantly, to provide excellent care and management for its clients and their estates.

The compliance audit found non-compliance in nine key areas which are described in the draft compliance audit report. My client does not believe that it is productive to address each of the various findings. Please note that my client will continue to work to improve the education and training of its staff as well as its procedures. \

With respect to finding #9, however, my client does take exception. Finding #9 indicates that my client should have more of its estate managers and/or care managers become certified fiduciaries. My client respectfully disagrees. Although it has a staff to assist them, the Principals, Heather and Peter Frenette, assume primary responsibility for every court appointment as guardian, conservator or personal representative. For example, with respect to conservatorships or decedent's estates, no estate manager can transfer funds, make any investment decisions, or sign any checks. All such duties can only be performed by one of the Principals. For guardianship cases, Heather Frenette has monthly

Ms. Kitty Boots August 9, 2006 Page 2

team meetings and daily, often multiple times per day, communications via telephone, in person or by email with her care managers regarding any material changes or concerns. Significant decisions, such as whether or not to issue "Due Not Resuscitate" orders can only be signed the Principal or at the Principal's direction. During their infrequent vacations, or when both Heather and Peter are away from the Phoenix Metropolitan area, The Sun Valley Group, Inc. has delegated its authority to counsel undersigned or Stephanie Bivens of Bivens & Associates. Both counsel undersigned and Bivens & Associates are well versed in fiduciary practices and, as you know, advise various fiduciaries on all aspects of their responsibilities.

Arizona Code of Judicial Administration § 7-202(E)(1)(b)(4) reads:

"The principal shall agree that no fewer than one certified fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative."

The Sun Valley Group, Inc. has complied with such administrative code section.

Thank you again for the professionalism and courtesy extended to The Sun Valley Group, Inc. during the audit. If you have any questions regarding the above, please contact Peter or Heather Frenette.

Very truly yours,

Alisa I. Grav

AJG:jm

cc: Peter Frenette
Heather Frenette

# Section 3

B.
Response from Principal



Peter Frenette, MBA email: <u>peter@sunvalleygroup.com</u>

August 30, 2006

Ms. Katherine A. Boots
Compliance Unit Manager
Certification and Licensing Division
Arizona Supreme Court
Administrative Office of the Courts
1501 West Washington Street
Phoenix, Arizona 85007

### HAND DELIVERED

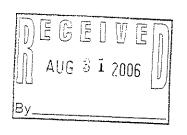
Re: Supplement to Response of the Fiduciary Compliance Audit

Dear Ms. Boots.

We are grateful for the manner in which the compliance audit was conducted. We appreciated the opportunity to review our performance with your assistance. You have identified some areas we will make improvements on to continue providing excellence for our clients and their estates. Per your request, I will supplement our response to the response filed on behalf of The Sun Valley Group, Inc. (SVG) by Alisa Gray, Esq. on August 9, 2006.

### Finding #1, Certification Number:

Documents submitted to the Superior Court in Maricopa County did not include the fiduciary's certification and Sun Valley Group, Inc.'s business certification numbers on court documents.



### Requirement:

SVG must include the required certification numbers, the individual's and the office, on all documents submitted to the Superior Court.

### Auditee's Response:

SVG agrees with the Finding that one or both certification numbers were missing on court documents audited. SVG has taken steps to comply with the Requirement. SVG has sent two letters out to its counsel to ensure this to be performed. The first letter went out when SVG learned the Certification and Licensing Division had audited other fiduciaries and made this finding. The second letter went out in July, 2006 after our audit was conducted and the same finding was made. SVG will make attempts for its counsel to place this on their pleadings, when not appearing SVG will request edits be made to the pleading or handwrite our individual and business certifications on the pleading documents.

### Finding #2, Timeliness:

Statutorily required reports on fiduciary clients were submitted to the court after the due dates or not at all.

#### Requirement:

The fiduciary must submit the inventory and appraisement, annual accountings, guardianship reports, estate management plans and/or proof of restriction on or before the statutorily required due date or court ordered due date for each client.

#### Auditee's Response:

SVG agrees with the Finding regarding timeliness of SVG's reports to the court. SVG identified this deficiency in our preparations for the audit. We found the process of self-reporting the data requested in advance of the audit to be insightful and corrective action has been initiated to fulfill the Reguirement. Let it be said, SVG is also dependent on its counsel to file its reports to the court. Since the audit, SVG has fired one attorney representing SVG as he failed for the second year in a row to file an Annual Accounting by its

due date. SVG has begun a review of its docket due dates as calendared in our *TimeMatters* database. The attorney for SVG must also have accurate dates calendared and hence the outcome of our review will be shared with our counsel. The process is expected to be completed by mid September. This will ensure our counsel is supplied with the data timely by SVG and aid the attorney in filing on time.

### Finding #3, Accuracy:

The inventory and appraisement, annual accountings and annual guardianship reports required by the court were inaccurately prepared and/or documented in the sampled cases.

#### Requirement:

The Fiduciary must ensure any document filed with the Superior Court in Maricopa County is complete, accurate and understandable.

#### Auditee's Response:

SVG agrees with the Finding, there were inaccuracies in the sampled cases. SVG will seek changes to comply with the Requirement. SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework.

### Finding #4, Documentation

#### Requirement:

SVG must develop a systematic process for marshalling, securing and documenting the administration of a client's estate and/or care to include all assets, transactions, activities and decision-making for each court appointed client.

### Auditee's Response:

SVG agrees with the Finding, there were missing documents in the sampled cases. SVG will seek changes to comply with the Requirement. SVG will take steps to improve the professionalism of its employees by making enhancements in its case files, Case Management database *TimeMatters*, its policies and procedures, training of its staff, and additional education coursework. SVG has begun to add "Outlines" to each new case built in our relational database. Outlines are a systematic process to identify all tasks a fiduciary must complete or could encounter in performing our function. They are codified as "To-Do's" in our *TimeMatters* Case Management software forcing us to complete them by a given date. *TimeMatters* will "tickle" us with our To-Do's in advance of a given date or alert us if tasks are not completed. We have also begun to make improvements in our physical files. We have reconfigured the file room, sought addition file space, are scanning more documents and linking them to a client in *TimeMatters*, and hired a file clerk to exclusively file and organize the physical files.

### Finding #5, Inventory

Arizona statue requires a fiduciary to list with reasonable detail and indicate the market value of an estate as of the date of appointment or date of death of each item listed on the inventory.

#### Requirement:

The fiduciary must provide detail on an inventory, even if it is of nominal value, to avoid giving erroneous or misleading information to either the court and/or interested parties.

#### Auditee's Response:

SVG agrees with the 2 erroneous findings in the audited sample. SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework

### Finding #6, Supplemental Inventory

Client property subsequently discovered or valued was not included in the original inventory and appraisement and was not provided to the court in a supplemental inventory.

### Requirement:

If any property not included in the original inventory comes to the knowledge of a fiduciary or if the fiduciary learns the value or description indicated in the original inventory for any item is incorrect or misleading, the fiduciary must make a supplementary inventory and file it with the court and/or notify the heirs.

#### Auditee's Response:

SVG agrees with the 2 erroneous findings in the audited sample. SVG will take steps to comply with the Requirement and improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework.

### Finding #7, Securing Assets

A Fiduciary must take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible.

#### Requirement:

The Fiduciary appointed as conservator must observe the standard of care of a prudent man dealing with the property of another and if the fiduciary has special skills or expertise (i.e., certification) she/he is under a duty to exercise prudence, intelligence and diligence.

#### Auditee's Response:

SVG agrees with the erroneous finding in the audited sample. SVG will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework.

### Finding #8, Diligence

A Fiduciary must exercise extreme care and diligence when making medical and financial decisions on behalf of a ward or protected person.

### Requirement:

A Fiduciary must exercise extreme care and diligence when making medical and financial decisions on behalf of a ward or protected person.

### Auditee's Response:

SVG agrees with the findings and will take steps to improve the professionalism of its employees by making enhancements in its policies and procedures, training of its staff, and additional education coursework.

### Finding #9, Certified Staff

The Arizona Code of Judicial Administration § 7-202 requires the principal fiduciary to agree that not fewer than one certified fiduciary shall have the assigned primary responsibility for each court appointment as a guardian, conservator or personal representative.

### Requirement:

Staff exercising decision-making for a court appointed client in the course of their duties should become certified.

### Auditee's Response:

SVG agrees with the Requirement and believes it is in compliance. SVG does not believe the two Estate Managers and the two Care Managers should become certified. The staff assists the Certified Fiduciaries, Peter and Heather Frenette; Peter and Heather Frenette assume responsibility for every court appointment as guardian, conservator or personal representative. For example on estate matters, no Estate Manager can transfer funds, make any investment decisions or sign any checks. All such duties can only be performed

by one of the Principal Fiduciaries. On guardianship matters, Heather Frenette, RN has regular team meetings and daily communication with the Care Managers regarding any material changes or concerns. Significant decision, such as whether or not to issue "do not resuscitate" orders can only be signed by the Principal or at the Principal's direction.

During the Principals' infrequent vacations or if they are away from the Phoenix metro area, they are within telephonic reach. They also delegate authority to Alisa Gray, Esq. or Stephanie Bivens, Esq.; both versed in fiduciary practices and as you know, advise various fiduciaries on all aspects of their responsibilities.

SVG believes it is in compliance with Code of Judicial Administration § 7-202 (E)(1) (b) (4) as "the principal shall agree that no fewer than one certified fiduciary shall assume the primary responsibility for each court appointment as a guardian, conservator or personal representative" has been achieved.

Thank you again for the professionalism and courtesy extended to SVG during the audit. If you have any questions, please let me know.

Sincerely,

THE SUN VALLEY GROUP, INC.

Peter Frenette

Peter Frenette

cc: Alisa Gray, Esq.